

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

FIRST APPEAL NO.107 OF 2020

APPELLANTS : 1. Shri Manohar s/o. Tukaram Bhelave,
Orig. Claimants on R.A. Aged-69 years, Occu.- Nil,

2. Sau. Pramila w/o. Manohar Bhelave,

Both r/o. Shiv Nagar, Tumsar,
Tah. Tumsar, Dist. Bhandara (M.S.)

//VERSUS//

RESPONDENT : Union of India, through the General
Orig. Non-applicant on Manager, South East Central Railway,
R.A. Bilaspur (C.G.)

Shri Kaustubh U. Fule, Advocate for the Appellants.
Ms. Ashwini S. Athalye, Advocate for the Respondent.

CORAM : **S.M. MODAK, J.**
DATE : **15th JUNE, 2022.**

ORAL JUDGMENT

01] Heard learned Advocate Shri Fule for the appellants and learned Advocate Ms. Athalye for the respondent. Matter is heard at the admission stage by consent. Admit.

02] The Railway Claims Tribunal, Nagpur Bench, Nagpur (hereinafter referred to as “the Tribunal”) as per the judgment dated 12th

January, 2018 was pleased to dismiss the claim filed by the parents of the deceased-Tushar. It was dismissed for the reason that there was no evidence to show that Tushar was a bonafide passenger. The Tribunal has given various reasons prior to arriving at that conclusion. The correctness of the said decision is challenged by the appellants.

03] The appellants are the parents of deceased-Tushar. Deceased-Tushar was preparing for engineering course at Nagpur. On the fateful day i.e. 15th April, 2014, he was travelling from Nagpur to Tumsar at his native place through unnamed train. He could not get a seat and that is why he was standing near door of the compartment. When the train reaches near village Pahuni in between Bhandara and Khat Railway Station, he fell down. He succumbed to the injuries. The information was given by Loko Pilot of Train No.12860 at 06:52 hrs. and accordingly Bhandara Police Station have carried out the inquest panchanama on 16th April, 2014. Crime details form was also prepared by Police Inspector attached to the Police Station, Bhandara. On the same day, the dead body was sent for post-mortem examination and the doctor has opined that probable cause of death was due to haemorrhagic shock with injuries to vital organs.

04] The parents got knowledge about the death on 19th April, 2014. Thereafter, they filed a claim petition before the Tribunal. Father-

Manohar Bhelave gave evidence. Whereas on behalf of railway administration, one witness by name Ajay Chahande was examined. On 15th April, 2014, he was working as Deputy Station Superintendent at Khat Railway Station. Statutory investigation was also carried out. The statements of the parents were recorded. As they have not seen the incident, they could not throw much light as to how accident took place. Documentary evidence was also given before the Tribunal. With the assistance of both the learned Advocates, I have perused that judgment. The Tribunal has emphasized on absence of railway ticket found during personal search of the dead body. Emphasis was also laid on not finding out the mobile phone with the dead body. It was material because the father has said that prior to the incident, there was a communication in between them on mobile.

05] In paragraph 15 of the impugned judgment, though the Tribunal has referred to one Suresh Bhoyar as AW-1, his name is incorrect. It ought to have been Manohar. The Tribunal has found his evidence as vague and unspecific. As per the evidence of RW-1, the dead body of unidentified person cut by railway is lying in between up and down railway track in between Khat and Bhandara. There is a distance of 300 meters in between two spots. The Tribunal observed that the incident is not of a fall from a train. It is for the reason that there were no eye witnesses. Even the Tribunal has laid emphasis on the conduct of the

parents in not making inquiry about whereabouts of the son in between 15th April, 2014 to 19th April, 2014. The Tribunal also laid emphasis that the dead body was not lying unnoticed for a long period, but it was noticed in sufficient period. For the above reasons, the claim was refused.

06] According to the learned Advocate for the appellants, there is principle of strict liability as contemplated under Section 124A of the Railways Act, 1989 (for short “the said Act”). According to him, his case is covered under Section 123(c)(2) of the said Act. In order to buttress his submission that absence of railway ticket does not make the passenger unauthorised passenger, he relied upon a judgment in the case of Jaipal Pradhan Vs. Union of India and Others¹. Even he relied upon the observations of the Hon’ble Supreme Court in the case of Union of India Vs. Rina Devi² and more specifically in paragraph 17.4 of the said judgment. Hon’ble Supreme Court observed merely because dead body is found on railway track, it does not mean deceased was a bonafide passenger. Initial burden to prove that deceased was a bonafide passenger lies on the claimant and then it shifts on the railways. It is further observed that the initial burden can be discharged by filing an affidavit of relevant facts. After perusing both the judgments, it is clear that a passenger at the time of accident may also loose the ticket that does not by itself make the passenger as an unauthorised passenger. There may be

1 2020(4) T.A.C. 202 (P.&H.)

2 AIR 2018 SC 2362

various reasons which may occur in between purchasing a ticket and happening of the incident. Hon'ble Supreme Court has laid emphasis on filing of an affidavit by a person narrating the relevant facts.

07] On this background, the findings recorded by the Tribunal thereby treating the deceased as unauthorised passenger for want of ticket does not hold good. The tribunal has overlooked the observations of the Assistant Commercial Manager. He has opined that the deceased had fallen from the train. Considering the facts, it is clear that the parents have not accompanied the deceased at the time of travel. When the statement of the father is perused, we may find that he has deposed about how he got knowledge about the incident. He has deposed that his son has purchased the ticket. It is true that he was not aware about the name of the train. There is no case put up by the railways as incorporated in Section 124A of the said Act. Though a suggestion is given to the father that there was a criminal act on the part of the deceased, it was not substantiated. It is important to note that the deceased was not caught by railway staff for travelling without railway ticket. It is also important to note that why the deceased will go to spot when he was making preparation for engineering course at Nagpur. Tribunal has considered what are the lacunaes in the case of the claimants but forgotten to consider the factors mentioned above.

08] For the above reasons, there is a reason to believe that the deceased was a bonafide passenger. The Tribunal has not considered the provisions of Railways Act properly. There is a strict liability on the railways as contemplated under Section 124 and Section 124A of the said Act. That is to say the claimant need not prove any act of negligence on the part of railways. Railways can claim exemption if they will make a case under any of the situations prescribed under proviso to Section 124 of the said Act. However, the claimant still has to prove basic ingredients for claiming compensation. The Tribunal has overlooked this fact. The Tribunal has unnecessarily laid emphasis on the issue relating to possessing the ticket and not possessing the mobile phone. These factors do not *ipso facto* make the passenger as unauthorised passenger. These are observations of the basis of facts and circumstances of the case. Hence, the impugned judgment requires interference.

09] As per the amendment made in Railway Accidents and Untoward Incident (Compensation) Rules, 1990 notified on 2nd December, 2016, the compensation is enhanced to Rs.8,00,000/-. Hon'ble Supreme Court in the case of Rina Devi (supra) has also dealt with this issue. That is to say, whether the amount prevailing at the time of accident or subsequently enhanced amount will be applicable. It is dealt with in paragraph 15.4 of the said judgment. Amongst the two

amounts that is to say Rs.4,00,000/- along with the interest on one hand and Rs.8,00,000/- on the other hand which is higher is to be paid. The claimants are entitled to receive Rs.8,00,000/- which is higher, then certainly they are not entitled for interest. According to the claimants, after calculation it is submitted that Rs.8,00,000/- is higher. Hence, they are entitled to Rs.8,00,000/- without interest. Hence, the order:

ORDER

- i. The appeal is allowed.
- ii. The judgment passed by the Railways Claims Tribunal, Nagpur dated 12th January, 2018 is set aside.
- iii. The respondent is directed to pay the compensation of Rs.8,00,000/- (Eight Lakhs) to the claimants within a period of three months from today.
- iv. Once the amount is deposited before the Tribunal, it be distributed amongst the claimants equally.

10] The appeal is disposed of in above terms.

(S.M. MODAK, J.)